IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MMO No.24 of 2007.

Date of decision:16.11.2007

Sanjay Puri ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.Ajay Kumar, Advocate.

For Respondents: Mr.J.S.Guleria, Law Officer for R-1.
Mr.Amit Sharma vice counsel for R-2.
Mr.Ashok Sood, counsel for R-3.

Deepak Gupta, J.(Oral)

A sample of Suji was taken by the Food Inspector, Municipal Corporation, Shimla from respondent No.2 Rajeev Verma on 10.10.2000. The sample was sent to the Public Analyst for analysis. The Public Analyst gave his report on 16.11.2000 to the effect that the sample is adulterated. Thereafter, a complaint under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) was filed in Court on 12.6.2001. On 20.9.2001 notice of accusation was put to the respondent No.2 and the case was fixed for evidence on 20.10.2001.

On 20.10.2001 respondent No.2 filed an application under Section 20-A of the Act for impleading M/s.Gupta Agencies through its Proprietor Shri Bhola Nath Gupta as co-accused

(respondent No.3) on the ground that he had purchased the Suji in a sealed polythene bag from said respondent No.3 and had kept it in the same condition. Thereafter, respondent No.3 was impleaded on 12.12.2001. Notice of accusation was put to respondent No.3 by the trial Court who also moved an application under Section 20-A for impleading the petitioner as co-accused in the case before the trial Court. In the said application it was alleged that the respondent No.3 had purchased the Suji in question from M/s.New Nav Bharat Flour Mills and it be impleaded as party through its Managing Director Shri Sanjay Puri. This application was allowed by the trial Court and M/s.New Nav Bharat Flour Mills was added as a party through the petitioner as its Managing Director. Thereafter, the present petitioner moved an application under Section 245 Cr.P.C. for recalling the previous order. The main grounds taken were that M/s.New Nav Bharat Flour Mills has no separate identity. It is in fact a unit of M/s.PBI (India) Ltd. a Company incorporated under the Indian Companies Act, 1956. It was further alleged that the petitioner had nothing to do with the day to day running of the Company and that one Sh.Vijay Kotwal, Production Manager of the Company had been duly nominated under Section 17 of the Act with the local Health authority at Jammu and if the Company is impleaded it should be prosecuted through its nominee. This application was contested by the other co-accused.

The learned trial Court held that in view of the law laid down by the Apex Court in **Adalat Prasad vs. Rooplal Jindal and others,**

(2004)7 SCC 338, it had no jurisdiction to recall its earlier order and therefore rejected the application. The petitioner challenged this order before the learned Sessions Judge who affirmed the order of the trial Court and dismissed the Revision Petition. Hence, the present petition under Section 482 Cr.P.C.

As far as the jurisdiction of a Criminal Court to recall its own orders is concerned I need not go into this question in view of the decision which I propose to take on the merits of the case.

From the material placed on record it is apparent that M/s.New Nav Bharat Flour Mills is only a Unit of PBI (India) Ltd. and the legal entity is PBI (India)Ltd. which is duly incorporated under the Indian Companies Act, 1956. It is also apparent that M/s.New Nav Bharat Flour Mills being a unit of PBI (India) Ltd. had passed a Resolution nominating Sh.Vijay Kumar Kotwal son of Shri Hari Parkash, R/o House No.152, Sector No.9, Nanak Nagar, Jammu, Production Manager of the Company M/s.New Nav Bharat Flour Mills under Section 17(2) of the Act. There is no pleading or evidence to show that the petitioner Sanjay Puri being the Managing Director of the Company is involved in the day to day running of the Company.

The Apex Court in **R.Banerjee and others vs. H.D. Dubey and others, 1992(1) FAC 128** held as follows:

> "4.It is clear from the plain reading of section 17 that where an offence under the Act is alleged to have been committed by a Company, where the company has nominated any person to be in charge of, and responsible to, the company for the conduct of its business that person will be liable to be proceeded against and punished for the commission

> of the offence. Where, however, no person has been so nominated, every person who at the time of the commission of the offence was in charge of, and responsible to, the company for the conduct of its business shall be proceeded against and punished for the said crime. Even in such cases the proviso offers a defence, in that, the accused can prove his innocence by showing that the offence was committed without his knowledge and notwithstanding the exercise of due diligence to prevent it. The scheme of sub-section (1) of section 17 is, therefore, clear that the cases where a person has been nominated under sub-section (2) of Section 17, he alone can be proceeded against and punished for the crime in question. It is only where no such person has been nominated that every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business can be proceeded against and punished……"

It may however be clarified that even if nomination is made if it is shown that the offence was committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other officer of the Company the said Officer can also be proceeded against. There is no such allegation in the present case and the only ground for impleading the petitioner is that he is the Managing Director of the Company. In view of the nomination made by the Unit of the Company the Managing Director could not have been made responsible and only the nominee could be prosecuted.

It has been urged on behalf of the respondents that the nomination has only been made in respect of the local area i.e. Jammu and therefore the nomination does not hold good for Shimla. In this behalf reliance is placed on a judgment of the Bombay High Court in **Azim H.Premji and others vs. State of Maharashtra, 2002(1) FAC 44.** In my opinion the said judgment has no

applicability to the facts of the present case. In that case the Company itself had different units and different offices all over the Country and it was in this context that the Bombay High Court held that the Company was required to notify the nomination to the separate local health authorities in terms of Section 17(2) of the Act. In the present case the Manufacturing Unit of the Company is at Jammu and the nomination was duly communicated to the local health authority at Jammu. The Company has no office in Shimla. It had sold its goods to a wholesaler at Shimla who has further sold the goods to a retailer. It is basic commonsense that in such an eventuality the Company was not required to make a nomination with the local health authority at Shimla. Where the Company has different warehouses or various retail units in different States it may be required to make different nominations in respect of each local unit. But where the Company itself is not having its unit in other places it is only required to make nomination in the place where the production is taking place.

I however do not agree with the petitioner that the Company could not have been impleaded.

Keeping in view the fact that the case has been lingering on for five years and with a view to avoid any further delays and in exercise of the powers conferred in this Court under Section 482 Cr.P.C. to do justice it would be appropriate to delete the name of the petitioner and in place of the petitioner to array M/s.PBI (India) Ltd.SIDCO Industrial Complex, Bari Brahmana, Jammu through its

nominee Sh.Vijay Kumar Kotwal son of Shri Hari Parkash, R/o House No.152, Sector No.9, Nanak Nagar, Jammu, Production Manager of the Company as accused No.3 in the complaint.

The petition is allowed in the aforesaid terms. The learned trial Court shall now issue notice to M/s.PBI (India) Ltd. through Sh.Vijay Kumar Kotwal at both the addresses. The trial Court shall endeavour to decide the case as early as possible and in any event not later than 31st December, 2008.

November 16, 2007 **(Deepak Gupta),**
PV **Judge.**